

AMENDED IN SENATE JULY 15, 2003
AMENDED IN SENATE APRIL 21, 2003
AMENDED IN SENATE APRIL 10, 2003

SENATE BILL

No. 901

Introduced by Senator Dunn

February 21, 2003

An act to add Chapter 10.5 (commencing with Section 15600) to Division 5 of the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

SB 901, as amended, Dunn. Low-income credit unions: community reinvestment.

Existing law, the California Credit Union Law, provides for the regulation of credit unions by the Commissioner of Financial Institutions. A willful violation of the California Credit Union Law is a crime.

This bill would authorize the commissioner to approve the establishment of low-income credit unions if certain conditions are satisfied with respect to the median income of the credit union's *potential* membership. The bill would authorize low-income credit unions to engage in various activities, including, among other things, establishing a new branch in a low-income area, ~~establishing a new credit union in a low-income area~~, receiving shares, share drafts, and share certificates from nonmembers *and nonmember institutions*, and receiving secondary capital from nonnatural person members and nonnatural person nonmembers under specified conditions. The bill would require the commissioner to issue final regulations implementing these provisions by October 1, 2004, and to facilitate

these provisions by, among other things, adding underserved communities to the fields of membership of existing credit unions.

Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) Lending institutions, including banks, credit unions,
4 savings and loans, mortgage lenders, and insurance companies,
5 earn profits from fees and premiums paid by customers *and*
6 *members*, as well as through investments that are funded by the
7 capital of their customers *and members*.

8 (b) In exchange for profits, these institutions have a
9 responsibility to provide services to their customers *and members*.
10 These services include making loans and other community
11 investments.

12 (c) In order to encourage depository institutions to meet this
13 responsibility, the United States Congress passed the Community
14 Reinvestment Act in 1977.

15 (d) The explicit goal of the Community Reinvestment Act is to
16 increase the amount of lending, investment, and services offered
17 by banks in the communities in which they operate. The
18 Community Reinvestment Act is intended to impact most,
19 especially the lending, investment, and services provided in low-
20 and moderate- income neighborhoods, consistent with safe and
21 sound banking operations.

22 (e) Community Reinvestment Act compliance is assessed
23 through periodic examinations that are conducted by federal
24 regulators from four different regulatory agencies. After the
25 examination is complete, regulators give a Community



1 Reinvestment Act rating to each institution to denote the
2 institution's level of compliance.

3 (f) The regulations by which banks are judged are vague and
4 insufficient to accomplish the stated goal of the act.

5 (g) Presently, the Community Reinvestment Act regulations do
6 not do the following:

7 (1) Specify investment, lending, or service requirements.

8 (2) Enumerate specific investment goals for various types of
9 lenders.

10 (3) Require specific geographic investments for lenders.

11 (4) Specify what types of loans and investments do not qualify
12 in the assessment of Community Reinvestment Act compliance.

13 (h) Because of the vagueness of these regulations, and to
14 achieve the desired effect of the Community Reinvestment Act,
15 the state must take action to increase lending, investment, and
16 services in low- and moderate-income communities.

17 (i) It is the policy of the state to establish public policy that
18 encourages lending institutions to provide financial and related
19 services to residents and businesses in their communities in order
20 to stimulate economic activities in the communities they serve.
21 The unrealized ideals of Community Reinvestment Act are
22 consistent with the state's goals.

23 (j) Investments, lending, and services in low- and
24 moderate-income communities result in increased income, and
25 ownership and employment opportunities for low-income
26 residents, businesses, and other community growth efforts.

27 (k) Credit unions are one important part of the lending
28 community. The goals for community reinvestment as enumerated
29 above are furthered by the presence of credit unions in the state's
30 low-income communities.

31 SEC. 2. Chapter 10.5 (commencing with Section 15600) is
32 added to Division 5 of the Financial Code, to read:

33
34 CHAPTER 10.5. COMMUNITY REINVESTMENT

35
36 Article 1. General Provisions

37
38 15600. (a) *The commissioner shall create an application and*
39 *promulgate an application process, which may be modified from*
40 *time to time as necessary, for the designation of low-income credit*

1 unions. This application shall include, but not be limited to,
2 information regarding the proposed location and field of
3 membership for the low-income credit union designation.

4 (b) A credit union, including a credit union in the process of
5 incorporating under this division, may submit an application to the
6 commissioner to be designated as a “low-income credit-union”
7 ~~and the union.~~”

8 (c) ~~The commissioner shall~~ may approve the application if
9 either of the following conditions are met:

10 (1) At least 50 percent of a substantial and well-defined
11 segment of the credit union’s members earn no more than 80
12 percent of the median income for California, or the community
13 area as established by the United States Census Bureau, the United
14 States Department of Housing and Urban Development, or the
15 California Department of Finance, whichever is higher.

16 (2) At least 50 percent of the potential-~~primary~~ members of the
17 ~~credit-union’s members~~ union earn no more than 80 percent of the
18 median income for California, or the community area as
19 established by the United States Census Bureau, United States
20 Department of Housing and Urban Development or the California
21 Department of Finance, whichever is higher.

22 ~~(b)~~

23 (d) For the purposes of paragraphs (1) and (2) of subdivision
24 ~~(a)~~ (c), natural persons enrolled as full-time or part-time students
25 in a college, university, high school, or vocational school shall be
26 conclusively presumed to satisfy the low-income earnings
27 threshold.

28 ~~(e)~~

29 (e) The commissioner may adjust the earnings levels set forth
30 in subdivision-~~(a)~~ (c) for geographic areas with higher costs of
31 living.

32 ~~(d)~~

33 (f) The application specified in subdivision (a) shall be
34 developed by regulation of the commissioner and shall require an
35 applicant to indicate the specific low-income-~~community~~
36 *population meeting the criteria set forth in subdivision (c)* that will
37 be served if the application is approved. ~~A separate application~~
38 ~~shall be required under subdivision (a) for each location a credit~~
39 ~~union desires to operate as a low-income credit union.~~

40 ~~(e)~~

(g) The commissioner shall approve or deny an application to be designated as a low-income credit union within ~~60~~ 90 days of receiving the *completed* application. ~~If the commissioner denies an application for low-income credit union status, the credit union may appeal the denial to the Secretary of Business, Transportation and Housing.~~

(h) *For purposes of this chapter, “substantial and well-defined segment” shall mean any group, association, or community of more than 1,000 persons.*

15601. A credit union shall, within 12 months of designation as a low-income credit union, establish a branch in a low-income community approved by the commissioner, *provided that the establishment of this branch does not compromise the safety and soundness of the institution.*

15602. (a) ~~Every~~ *For purposes of serving a low-income area as defined in subdivision (b) of Section 15600, a low-income credit union shall be permitted to do the following:*

(1) Provide financial services through an existing branch in the low-income area.

(2) Establish a new branch in a low-income area.

~~(3) Establish a new credit union in a low-income area.~~

~~(4) Provide financial services, including share and loan services, to persons meeting the requirements set forth in subdivision (a) of Section 15600.~~

~~(5)–~~

(3) Receive shares, share drafts and share certificates from nonmembers.

~~(6)–~~

(4) *Receive shares, share drafts, and share certificates from nonmember institutions that use those shares to satisfy the institution’s requirements under the Community Reinvestment Act of 1977 (12 U.S.C. Sec. 2901 et seq.).*

(5) Receive secondary capital from nonnatural person members and nonnatural person nonmembers ~~on the following conditions~~ *solely for the purpose of establishing and maintaining branch offices in low-income areas. The offer and sale of secondary capital shall be subject to regulations promulgated by the commissioner that shall address issues of safety and soundness, including the secondary capital’s maturity, terms of sale, terms of the capital, total amount of secondary capital that may be*

1 *outstanding at one time, redemption, eligibility towards a*
2 *determination of net worth, and the eligibility of the investors. In*
3 *addition, secondary capital shall be subject to all of the following:*

4 (A) The secondary capital shall be established as an uninsured
5 secondary capital or other form of nonshare account.

6 ~~(B) The maturity of the secondary capital shall be for a~~
7 ~~minimum of five years.~~

8 ~~(C) The secondary capital may not be redeemable prior to~~
9 ~~maturity.~~

10 ~~(D)~~

11 (B) The secondary capital may not be insured by the National
12 Credit Union Share Insurance Fund or any other approved insurer
13 provided for in Section 14858 of the Financial Code or any
14 governmental or private entity.

15 ~~(E)~~

16 (C) The secondary ~~capitalholder's~~ *capital holder's* claim
17 against the credit union shall be subordinate to all other claims
18 including those of shareholders, creditors, and the National Credit
19 Union Share Insurance Fund, or an approved insurer provided for
20 in Section 14858 or a private entity.

21 ~~(F) Funds deposited into the secondary capital, including~~
22 ~~interest accrued and paid into the secondary capital, shall be~~
23 ~~available to cover operating losses realized by the credit union that~~
24 ~~exceed its net available reserves and undivided earnings (i.e.,~~
25 ~~reserves and undivided earnings exclusive of allowance for loan~~
26 ~~losses), and to the extent funds are so used, the credit union shall~~
27 ~~under no circumstances restore or replenish the account. The credit~~
28 ~~union may, in lieu of paying interest into the secondary capital, pay~~
29 ~~interest accrued on the secondary capital directly to the investor or~~
30 ~~into a separate account from which the secondary capital investor~~
31 ~~may make withdrawals. Losses shall be distributed pro rata among~~
32 ~~all secondary capital held by the credit union at the time the losses~~
33 ~~are realized.~~

34 ~~(G)~~

35 (D) The secondary capital may not be pledged or provided by
36 the accountholder as security on a loan or other obligation with the
37 credit union or any other party.

38 ~~(H) In the event of merger or other voluntary dissolution of the~~
39 ~~credit union, other than merger into another low-income~~
40 ~~designated credit union, the secondary capital shall, to the extent~~

1 ~~they are not needed to cover losses at the time of merger or~~
2 ~~dissolution, be closed and paid out to the accountholder. If the~~
3 ~~merger of the credit union involves another low-income~~
4 ~~designated credit union, the account owner and the surviving~~
5 ~~credit union may mutually agree to maintain the secondary capital~~
6 ~~account under the existing terms.~~

7 ~~(I) A secondary capital contract agreement shall be executed~~
8 ~~between an authorized representative of the accountholder and the~~
9 ~~credit union that accurately establishes the terms and conditions of~~
10 ~~this section and contains no provisions inconsistent with this~~
11 ~~section.~~

12 *(E) Secondary capital raised pursuant to this subdivision shall*
13 *be spent exclusively on the establishment and operation of the*
14 *branch or branches in a low-income community or the financial*
15 *services offered by the low-income credit union.*

16 ~~(7)~~

17 (6) Exercise any other expanded authorities granted with
18 approval of the commissioner.

19 (b) Secondary capital authorized in this section does not limit
20 the authority of the commissioner to approve other forms of equity
21 capital pursuant to Section 14400.

22 (c) Notwithstanding subdivision (a), a credit union may
23 establish a branch or provide services through a shared service
24 center arrangement, and may cash checks, sell negotiable
25 instruments, including traveler's checks and money orders, and
26 money transfer instruments to any person within the credit union's
27 field of membership.

28 (d) For purposes of this chapter, "secondary capital" is a
29 subordinated loan where, in the event of liquidation, all other debt
30 owed by a credit union is required to be repaid before the
31 secondary capital loan is repaid.

32
33 Article 2. Miscellaneous
34

35 15610. (a) This chapter shall not be deemed to require a
36 financial institution to make loans or investments or to provide
37 services that are inconsistent with safe and sound operations.

38 (b) The commissioner shall issue final regulations to
39 implement the provisions of this chapter by October 1, 2004.

1 15611. The commissioner shall undertake every effort to
2 facilitate the provisions of this chapter, including, but not limited
3 to, the following:

4 (a) By providing additional resources to existing credit unions
5 who undertake to serve the communities, including, but not
6 limited to, state community development deposits, nonmember
7 deposits, secondary capital, grants and loans, and technical
8 assistance either in the form of services or grants for services
9 provided by outside agents.

10 (b) By adding underserved communities to the fields of
11 membership of existing credit unions.

12 (c) By licensing new credit unions.

13 (d) By removing restrictions that act as a barrier to the
14 community development process, including, but not limited to,
15 limitations on fixed assets, nonmember ~~deposit~~, *ad deposits*, and
16 net worth requirements.

17 SEC. 3. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.

26 _____
27 CORRECTIONS

28 Text — Page 7.

